



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/804,237
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Applicant: Yonghua Song
Group Art Unit: 2816
Examiner: Anh Quan Tra
Title: TEMPERATURE AND PROCESS INDEPENDENT
CMOS CIRCUIT
Attorney Docket: MP0031RE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests a Pre-Appeal Brief Conference in response to factual deficiencies in the Final Office Action mailed April 17, 2008. Specifically, Applicant contends that the reissue oath filed on June 21, 2004 is not defective.

STATUS OF CLAIMS

Claims 1-45, 47-56, 58-68 and 70-72 stand rejected under 35 U.S.C. § 103(a) as being based on a defective reissue oath under 35 U.S.C. § 251.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 recites a temperature and process independent analog integrated circuit that includes an analog function core that is responsive to a first differential input signal and a second differential input signal, and that has first and second output terminals. A first loading device has a first terminal responsive to the first output terminal, a second terminal responsive to a common mode voltage, and a first control terminal. A second loading device has a third terminal responsive to the second output terminal, a fourth terminal responsive to the common mode voltage, and a second control terminal. A compensation circuit is in communication with the first and second control terminals. The compensation circuit includes a first MOS transistor having a first source in communication with the common mode voltage, a first drain, and a first gate in communication with the first and second control terminals. A first differential amplifier has a first input in communication with a first bias voltage source, a second input in communication with the first drain, and an output in communication with the first gate and the first and second control terminals.

ARGUMENT

Claims 1-45, 47-56, 58-68 and 70-72 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251. In particular, the Examiner alleges that the reissue oath/declaration filed with this application is defective because the reissue oath/declaration fails to identify at least one error which is relied upon to support the reissue application, citing 37 C.F.R. § 1.175(a) (1) and MPEP § 1414.

A reissue declaration must contain a statement that the Applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than patentee had the right to claim in the patent. (MPEP § 1414). Please note that Page 2, Lines 3-4 of Applicant's declaration (hereinafter "the declaration") states "I believe that the original above-identified U.S. patent is partially inoperative by reason of my having claimed less than I had the right to claim in that patent." As such, Applicant respectfully submits that this portion of the requirements for a reissue declaration is satisfied.

Further, as previously noted in the response filed September 18, 2007, a reissue declaration must contain a statement of at least one error which is relied upon to support the reissue application. (MPEP § 1414). Here again, please note that Page 2, Line 4 through Page 3, Line 3 of the declaration states that a plurality of claims "contain a potential ambiguity with reference to the antecedent basis" for various phrases. Applicant submits that modification of language intended to eliminate ambiguity is sufficient support for reissue.

Applicant respectfully notes that ambiguity and a lack of antecedent basis can render a claim invalid under 35 U.S.C. § 112, second paragraph. For example, the

court in *In re Altenpohl*, 500 F.2d 1151 (C.C.P.A 1974), held that lack of antecedent basis in a claim is proper ground for reissue under 35 U.S.C. § 251:

lack of antecedent basis in a claim can render it invalid under 35 U.S.C. § 112, second paragraph, and correction of such a defect by issue should not have to depend on difference and scope of claim...a patentee should be allowed to correct an error or ambiguity in a claim without having to rely on implication or litigation. Accordingly, we hold that lack of antecedent basis in claim 11 is proper ground for reissue under 35 U.S.C. § 251. *Id.* at 1156-1157.

In the present declaration, Applicant clearly stated that the error in question is that one or more claims include a potential ambiguity due to improper antecedent basis.

In response, the Examiner alleges that Applicant “must state that the specific claim language is ambiguous (i.e., not a potentially ambiguity) and that he believes the ambiguity does render the claim invalid. Just because an ambiguity “can” render the claim invalid does not mean that it does render the claim invalid.” (See Page 2 of the present Office Action).

Applicant respectfully disagrees. Initially, please note that the phrase “can render it invalid” is a direct quotation from the above cited case, which held that lack of antecedent basis in a claim **can** render the claim invalid, and that a patentee should be allowed to correct an error or ambiguity in a claim. The Examiner fails to cite any evidence in support of the allegation that there is any meaningful distinction between identifying an ambiguity and identifying a potential ambiguity. Indeed, Applicant respectfully notes that all ambiguities are inherently “potential” ambiguities because whether or not language is ambiguous is a subjective determination of a future reader.

Here again, a reissue declaration must contain a statement of at least one error. The present reissue declaration clearly identifies multiple errors in the claims that


"contain a potential ambiguity with reference to the antecedent basis." In other words, Applicant recognizes and asserts that the claims include language that someone in the future may interpret as ambiguous because of a lack of proper antecedent basis. The Examiner fails to provide any actual evidence that this language is insufficient in view of *In re Altenpohl* or any other legal precedent.

In response, the Examiner merely asserts that "lack of antecedent basis does not automatically render a claim invalid under 35 U.S.C. § 112, 2nd paragraph" and completely ignores Applicant's arguments with respect to *In re Altenpohl* and that court's holding that **lack of antecedent basis in a claim is proper ground for reissue under 35 U.S.C. § 251**.

In view of the foregoing, Applicant respectfully asserts that the reissue declaration filed with this application is not defective. Accordingly, Applicant respectfully submits that the presently pending claims are in condition for allowance.

Respectfully submitted,

Dated: July 11, 2008

By: 
Michael D. Wiggins, Reg. No. 34,754
Damian M. Aquino, Reg. No. 54,964

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDW/DMA/rao